IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 25TH AUGUST 2006 / 3RD BHADRA 1928

ST.Rev..No. 365 of 2003

TA.280/2001 OF KERALA STAT,TVM.
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REVISION PETITIONER

P.J.A.MANOJ, PEEJAYE ENTERPRISES,
KUTTOOR, THIRUVALLA.

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENT:

STATE OF KERALA.

BY SPL. GOVT. PLEADER (SHRI V.V. ASOKAN)

THIS S.T.REV. HAVING BEEN FINALLY HEARD ON 25.8.2006 ALONG WITH ST.REV. NOS. 137/04, 138/04 & 161/04, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C. N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

S.T.REV.NOs. 365/03, 137/04,
138/04 & 161/04

Dated this the 25th day of August, 2006

JUDGMENT

C. N. Ramachandran Nair, J.

Question raised in these connected cases is whether the tribunal was justified in sustaining assessment of scrap materials under Section 5A, consumed in the production of lead. We have heard counsel for petitioner and the Special Government Pleader appearing for respondent. During hearing, counsel produced photographs and process chart involved in the recovery of lead metal from scrap. It is seen that main raw-material is battery scrap where-from lead is recovered. In the course of use of battery, lead plates get corroded and fall to the bottom of the battery-shell. Petitioner in the factory, processes the scrap material and recovers lead by employing various processes to eliminate the wastes. It is seen that melting plant is also run by petitioner for melting the recovered lead and making it into

ingots. From the purchase turnover and sales turnover, it is seen that substantial value addition is involved in recovery of the fine metal in ingot-form from waste materials. Therefore, we are of the view that recovery of lead from battery waste by engaging various processes in the factory involves consumption of raw-material in manufacture and production of a commercially different article. In such circumstances, levy of tax under Section 5A of the KGST Act in respect of purchase of old and waste battery shells, is upheld.

2. Even though there is no separate consideration of purchase of lead scrap as such in the form of lead sheets, fishing sinkers, press metal, lead wires, lead seals, lead bushes, wheel balance weights, lead lining for non-reactive tanks, protective coverings for X-ray rooms, etc., counsel submits that petitioner is making purchases of such lead scraps which are just melted and made ingots in the factory. Counsel relied on the decision of the Supreme Court in The State of Madhya Bharat (Now the State of Madhya Pradesh) and Others v. Hiralal ((1966) 17 STC

313), wherein the Supreme Court has held that in melting and conversion of iron and steel scraps into bars, there is no manufacture involved. Another decision relied on by petitioner is in State of Tamil Nadu v. Annai Industries ((1994) 94 STC 393), wherein the Supreme Court has held that recovery of polythene from old and waste polythene bags is not manufacture. Following these decisions, we are of the view that if the petitioner has purchased scrap sinkers and similar items melted and made into ingots, there cannot be any liability for purchase tax under Section 5A. Since the issue is raised first time before this Court, while confirming the order of the tribunal to the extent indicated above, we direct the Officer to conduct an inspection in the factory of petitioner, verify the Accounts and grant exemption from purchase tax under Section 5A on the purchase of the items referred above, to the actual quantity of pure scrap of lead purchased and melted into ingot and limit the levy under Section 5A only in respect of battery

and similar other scrap items, where recovery involves elimination of other meterials.

C. N. RAMACHANDRAN NAIR, JUDGE

K. M. JOSEPH, JUDGE

kbk.